

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1172 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

MAHESHKUMAR CHIMANLAL DAVE

Appearance:

MR. K.C.SHAH, LD. PUBLIC PROSECUTOR for Petitioner
MR JS PATEL for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 19/03/96

ORAL JUDGEMENT

The Respondents-Accused came to be acquitted of the offences punishable under Section 498A, 323, 504 and 506 read with Section 114 of I.P.Code, vide the orders dated June 30,1993, pronounced by learned 2nd JMFC, Anand in Criminal Case No. 2778 of 1988. The State being aggrieved by the said orders has presented the present Criminal Appeal. Upon hearing learned Government counsel

Mr. K.C.Shah for the Appellant State and learned counsel Mr.J.S.Patel for the Respondents, it appears that the present appeal against the orders of acquittal requires to be dismissed.

This is not a case in which I would say that another opinion is possible. I feel that no other view except that has been taken by the Court below was permissible. The prominent features noticed by the Court below is that, there were disputes between the parties, namely complainant Smt. Bharatiben Thakar and her husband and in-laws. The wife allegedly had left the house and her case is that, she had reverted back to the matrimonial house, where she was assaulted. The Court below has rightly come to the conclusion that when once the wife had left the matrimonial house she would not have reverted back to the same, especially when the relations were extremely strained. The prosecution wanted to explain away the situation by saying that one Mahendrabhai, a resident of Vadodara town had intervened and therefore the wife had reverted back to the matrimonial house. The Lower Court rightly points out that this important witness Mahendrabhai could never come to be examined. The reliance was sought to be placed upon the recorded tapes. The Court below has taken the view and in my opinion correctly, that, these tapes were not duly exhibited and therefore no reliance could have been placed upon the same. Moreover important witnesses have said before the Court below that they have no personal knowledge regarding the incident. Some of the accused persons who were sought to be involved in the incident were admittedly staying out of the town and were not present at the time of the incident. These reasons were weighed with learned Trial Judge and there has been the order of acquittal. On the appreciation of the evidence with the assistance of learned Government counsel Mr. Shah and learned counsel Mr. Patel for the respondents, I feel that no other view is possible. The Criminal Appeal therefore requires to be dismissed.

There is one more development which may be noticed only incidentally. When the said incident had allegedly occurred the divorce proceedings were pending before the Court at Nadiad. The proceedings were registered as HMP No. 21 of 1991. Because of the amicable settlement between the parties the consent terms were presented before the said Court on September 02, 1995. This consent terms have been accepted and the marriage has put an end to. This is also a circumstance which requires to be noticed incidentally.

The Criminal Appeal fails and the same is hereby dismissed. The orders of acquittal recorded by the Court below are upheld and confirmed. The respondents are on bail and therefore their bail bonds shall stand cancelled.
